

**Letter of Findings Number: 10-0118**  
**Income Tax**  
**For Tax Years 2000-2008**

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**ISSUES**

**I. Income Tax–Individual.**

**Authority:** IC § 6-3-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 3.1-1-3](#).

Taxpayer protests the computation of his income tax liability for the tax years 2000 through 2008.

**II. Tax Administration–Negligence Penalty and Interest.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties and interest.

**STATEMENT OF FACTS**

Taxpayer is an individual and is a resident of Indiana. Taxpayer did not file Indiana individual income tax returns for the tax years 2000 through 2008. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's individual income taxes for those years, and determined Taxpayer's liabilities based on documentation such as Taxpayer's W-2s and 1099s. The Department issued proposed assessments for individual income taxes, negligence penalties, and interest for those years. Taxpayer protests that the Department did not take into account certain expenses which would reduce his liabilities for those years. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Income Tax–Individual.**

**DISCUSSION**

Taxpayer, a truck driver, protests the imposition of Indiana income tax on Indiana gross income, claiming that the Department ignored expenses that would significantly reduce Taxpayer's liability for the years in question. When a taxpayer fails to file a return, the Department is authorized by IC § 6-8.1-5-1(b) to make an assessment based on the best information available:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest.

The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c):

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The requirement to file an Indiana income tax return is imposed by IC § 6-3-4-1:

Sec. 1. Returns with respect to taxes imposed by this act shall be made by the following:

- (1) Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#).

Taxpayer was required to file tax returns for each of the years in question, but did not. The Department properly made an assessment based on the best information available, which, since Taxpayer provided no income or expense information, was the Forms W-2 and 1099 Taxpayer received during the period. Additionally, since an assessment made in this manner is "considered a tax payment not made by the due date" under IC § 6-8.1-5-1(b), the Department properly applied interest and penalty on the amount of Taxpayer's unpaid tax.

Taxpayer asserts that he has "trade and business expense[s]" from his occupation as a truck driver that the Department should have considered in figuring his adjusted gross income as allowed under [45 IAC 3.1-1-3\(1\)](#), which provides that the "trade and business deductions" that are "contained in Internal Revenue Code Section 62 are allowed in determining Indiana Adjusted Gross Income."

At the Taxpayer's administrative hearing, Taxpayer produced a number of assorted receipts. The receipts were loosely organized but not by category or with any other explanation of their significance. The Taxpayer did not bring returns for the respective tax years. At the hearing, Taxpayer was instructed to prepare the returns including the expenses from the receipts and submit both the tax returns and copies of organized supporting documentation. Taxpayer subsequently sent returns for the tax years 2003 – 2008. Taxpayer failed to provide any documentation of expenses.

IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the

amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Accordingly, it is Taxpayer's responsibility to retain and provide to the Department the documentation that supports the amounts Taxpayer used to determine the tax owed.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates the amount or nature of these expenses, Taxpayer has failed to meet his burden to prove that the expenses were properly incurred as business expenses.

#### **FINDING**

Taxpayer's protest is denied.

### **II. Tax Administration–Negligence Penalty and Interest.**

#### **DISCUSSION**

Taxpayer protests the imposition of interest with respect to his assessment. Under IC § 6-8.1-10-1(e), interest cannot be waived. Taxpayer also protests the imposition of the negligence penalty pursuant to IC § 6-8.1-10-2.1, claiming that when his expenses are considered, the penalty and interest are wiped out. As discussed above, taxpayer has failed to meet the burden of proving that his expenses should be considered. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer repeatedly failed to file a required return, and the Department determined that this was due to negligence. In addition, Taxpayer failed several times to show up for appointments with the auditor after being given additional time to compile his records and failed to follow the hearing officer's instructions regarding the requirement to submit his returns with documentation. Taxpayer argues for penalty wavier by making a general statement of penalty protest. However, Taxpayer has not presented any evidence that Taxpayer has acted with reasonable cause. Therefore, Taxpayer has not provided sufficient grounds in his protest to justify the Department's waiver of penalty.

#### **FINDING**

Taxpayer's protest is denied.

#### **CONCLUSION**

In summary, Taxpayer's protests of the income tax, penalty, and interest assessments are denied.

*Posted: 09/01/2010 by Legislative Services Agency*  
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